IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
THE HON'BLE MR JUSTICE B.PRAKASH RAO
WRIT PETITION NO : 14816 of 2004

Between:
T.Nageshwar Rao, S/o T.V.Subba Rao,
R/o Kushaiguda, Hyderabad

..... PETITIONER

AND

1 The Joint Collector & Licensing Authority, Ranga Reddy District at Hyderabad
2 Kushaiguda Notified Municipal Industrial Area Service Society, rep.by its Commissioner & Deputy Zonal Manager (Engg), APIIC, EC, Kushaiguda, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly one in the nature of Writ of Mandamus declaring the impugned letter No.KNMIASS/89/2003 dated 13-08-2004 of the respondent No.2 as illegal, null, void, without jurisdiction and against the principles of natural justice.

Counsel for the Petitioner:MR.M.S.PRASAD

Counsel for the Respondent No.1: GP FOR HOME

Counsel for the Respondent No.2: E.MADANMOHAN RAO

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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W.P.NO.14816 OF 2004

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ORDER:

Heard Sri M.S.Prasad, the learned counsel appearing for the petitioner and the learned Government Pleader for Home, appearing for the respondent No.1 and Sri E.Madanmohan Rao, the learned Counsel appearing for the respondent No.2 herein.

In this writ petition, the petitioner by way of writ of Mandamus seeks to assail the impugned proceedings dated 13-08-2004 of the respondent No.2 herein, as illegal.

The case of the petitioner is that having purchased an extent of 2400 square yards of land situated at plot No.B-50 in Elec. Complex, Kushaiguda, under registered sale deed dated 13-02-1986 from the A.P. Industrial Infrastructure Corporation Limited, which in fact was allotted to him as long back 22-07-1978, the petitioner has been in possession. With a view to develop the said land by establishing a cinema theatre, which has already been recognized as industry as per G.O.Ms.No.686 dated 13-11-1982, the petitioner filed an application, on which the General Manager, Department of Industries, Government of Andhra Pradesh has registered M/s. Raganjali-Geetanjali theatres, Plot No.-B-50, EC Kushaiguda, for exhibition of motion pictures as an industry by the certificate dated 07-10-2002. Therefore, the petitioner

wanted to construct a building to accommodate industrial activity, which has been taken up by him, and also establish two theatres on the top floor. Accordingly, he has filed an application under Rule 8(A) of A.P. Cinema (Regulation) Rules, 1970 for grant of no objection certificate on 25-11-2002 along with all the required documents and the challan. The said application was forwarded by the respondent No.1 as per letter dated 06-12-2002 to the concerned authorities, as required under Rule 8 (B) of the said Rules. Thereupon, the Revenue Divisional Officer, Ranga Reddy East Division in his proceedings dated 17-12-2002 recommended for issuance of no objection certificate. The District Medical & Health Officer, Rangareddy District, made similar recommendation on 23-12-2002 for grant of no objection certificate. The Commissioner of Police, Cyberabad, Rangareddy District had issued proceedings dated 28-02-2003 granting no objection certificate for grant of construction permission.

It is pointed out that the respondent No.2 herein is an authority constituted by Government of A.P. under Section 389-B of A.P. Municipalities Act read with G.O.Ms.No.519 M.A. & U.D. Department Dated 21-09-1994. Therefore, the 2nd respondent has passed resolution No.15 of 46th managing committee meeting held on 22-01-2003 for issuance of no objection certificate for construction of twin theatres in the said plot. The said resolution was communicated by letter dated 28-01-2003 to the respondent No.1 and the neighbours no objection was also filed. Thereupon, the respondent No.1 has granted no objection certificate on 21-03-2003. Later, the petitioner has filed an application for grant of construction permission of twin theatres along with building plan, which was forwarded by letter dated 13-05-2003 to all the authorities who have approved the plan and recommended for grant of permission of two theatres. The respondent No.2 also passed resolution

No.1 dated 26-08-2003 granting approval for the plans of construction of two theatres, which is communicated to the respondent No.1 as per letter dated 28-08-2003. The said proceeding do taken consideration that the establishment of any theatre would not create any other disturbance, instead it would fetch the substantial revenue. Whereupon, the respondent No.1 has passed the final orders on 19-10-2003.

After following other formalities, correspondence and other required aspects, the petitioner has started the construction by investing huge amounts. However, suddenly the respondent No.2 issued the impugned letter dated 13-08-2004, which was served on 18-08-2004, asking the petitioner to stop the construction of cinema theatre immediately, which being challenged in this Writ Petition on the ground of no jurisdiction and as illegal.

According to the petitioner, the respondent No.2 being local authority and having followed all the procedure and grant of permission, cannot give any such direction to stop construction abruptly. Therefore, it is submitted that entire impugned action is wholly arbitrary, illegal and void. Since the petitioner's construction has come to standstill, the petitioner sought interim directions for suspending the impugned memo dated 13-08-2004. Hence, the Writ Petition.

In the counter-affidavit filed by the respondent No.2 herein it is stated that the plot allotted to the petitioner for utilizing the same for industrial purpose and the petitioner cannot use the same for any other purposes and the G.O. referred to by the petitioner is only for the purpose of giving incentives and not otherwise. It is further pointed out on behalf of the respondents that since the entire area is industrial area, therefore no other activities can be carried on. Hence, the petitioner is not entitled to construct the theatre and which do not come within the parameters of industry. However, it is always open for the petitioner herein to make use of the said plot for any industrial purpose but not

other purposes. The Corporation in fact did not consider the request of the petitioner vide letter dated 29-11-2002 for construction of theatre, since it involves several problems for the industries located therein. Even otherwise, HUDA had already rejected the request of the petitioner for land use conversion from industrial to recreational, as per proceedings dated 09-01-2003. Therefore, the petitioner cannot rest his claim for establishing a theatre. It is further pointed out that the 1st respondent also had rejected similar such request for grant of no objection certificate as per proceeding dated 21-03-2003. When the petitioner's activity for establishing theatre brought to the notice of the Government, the Government as per orders dated 07-04-2004 directed the 1st respondent herein to review of the entire process. The proceedings issued on 13-08-2004, by the Commissioner is in the interest and safety of the industrial area of the Kushaiguda. Hence, the Writ Petition is liable to be dismissed

Sri M.S.Prasad, the learned counsel for the petitioner, submits that once a permission is granted under the provisions of the A.P. Cinema Regulations for the construction of a theatre for the purpose of exhibition of films, no other authority, including the respondent herein has power to interdict with the construction, which has already commenced. Further, it is also pointed out that the said permission was granted after entire procedure and all the authorities including the respondents given no objection, and it does not come within its mouth to come around and stop the construction.

Sri E.Madanmohan Rao, the learned Counsel appearing for the respondent No.2 herein, submitted that admittedly plot is in the industrial area and therefore except for industrial use, no other use can be made. Whereas, the exhibition of films will not come within the definition of industry and therefore the petitioner is not entitled to any indulgence

from this Court.

Taking into consideration the submissions made and also on perusal of the material, it is seen that no doubt subsequent to purchase made by the petitioner in the industrial area, the petitioner sought a permission for construction of a theatre for the purpose of exhibition of films before the competent authority under the A.P. Cinema (Regulation) Act, 1955, which has been processed through and ultimately granted after the reports and no objections obtained from the concerned authorities. There is also no dispute on behalf of the petitioner that plot is situated in the industrial area and therefore the plot can be made use only for the purpose of industry, but not otherwise. However, according to the petitioner in view of the G.O.Ms.No.686 dated 13-11-1982 issued by the Government declaring the Cinema as industry, there cannot be any impediment for grant of such permission or establishing a theatre. This fact is sought to be denied by the respondents herein and as pointed out in the other proceedings, whereunder the petitioner's request was already negatived.

On a perusal of the G.O.Ms.No.686 dated 13-11-1982, it is seen that it has no application to the facts of the case nor it really takes it all such activities. Prima facie, I am of the view that the said G.O. will not have any application for the present purpose. The concerned authorities are not in support of the petitioner's objective. The Government by taking note of the real facts, has directed for reconsideration of the entire matter, by reviewing the entire process as per proceedings dated 07-04-2004. Except obtaining the permission from the authority under the provisions of the A.P. Cinema (Regulation) Act, 1955, there is nothing on record to show the due consent from the competent authorities, like HUDA, which has rejected the petitioner's request reiterating that it is not an industry for which the plot is meant for. Having regard to the aforesaid facts and circumstances, it is clear that petitioner has not come

out with all the facts for the purpose of enabling him to establish theatres in the area, which is admittedly reserved for industry. The petitioner is not satisfied this Court by any material to show that the cinema is an industry. Thus, the petitioner has failed to make out the prima facie case for seeking any indulgence from this Hon'ble Court.

In the circumstances, I do not find any merits in the Writ Petition and the same is, accordingly, dismissed. No costs.

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B.PRAKASH RAO, J.

Dated 07-09-2004.
Skmr

To
1 The Joint Collector & Licensing Authority, Ranga Reddy District at Hyderabad
2 Kushaiguda Notified Municipal Industrial Area Service Society, rep.by its
Commissioner & Deputy Zonal Manager (Engg), APIIC, EC, Kushaiguda,
Hyderabad
3. 2CCs to G.P. for Home, High Court of A.P., Hyderabad (OUT).
4. 2CD copies.